

# PATENT COOPERATION TREATY

## PCT


### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 23 MAR 2006

WIPO PCT

Applicant's or agent's file reference JE/P7166/PCT		<b>FOR FURTHER ACTION</b>		See Form PCT/IPEA/416
International application No. PCT/GB2004/005243		International filing date ( <i>day/month/year</i> ) 15.12.2004	Priority date ( <i>day/month/year</i> ) 06.01.2004	
International Patent Classification (IPC) or national classification and IPC C01B33/02				
Applicant PSIMEDICA LIMITED et al.				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 4 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand  24.08.2005		Date of completion of this report  22.03.2006		
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  Besana, S  Telephone No. +49 89 2399-		



**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/GB2004/005243

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**Box No. I Basis of the report**

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1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements**\* of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

**Description, Pages**

1-21

as originally filed

**Claims, Numbers**

1-8

as originally filed

**Drawings, Sheets**

1/1

as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT  
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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	1-6
	No: Claims	7,8
Inventive step (IS)	Yes: Claims	1-6
	No: Claims	7,8
Industrial applicability (IA)	Yes: Claims	1-8
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

**Re Item V.**

1. Reference is made to the following documents:

D1 : WO 98/27246 A (IMPLANT SCIENCES CORP) 25 June 1998 (1998-06-25)

D1: WO 02/067998 A (PSIMEDICA LIMITED; CANHAM, LEIGH, TREVOR;  
ASTON, ROGER) 6 September 2002 (2002-09-06)

2. Documents D1 (cf. p.3 l.14-p.4. l.7; p.6 l.15-16; p.11 l.7-13) and D2 (cf. p.3 l.1-20; p.4 l.8-19; p.22 l.1-p.24 l.11) disclose a radiotherapeutic product comprising silicon and phosphorous, also present as isotope <sup>32</sup>P. D2 specifically describes the use of the SiP powder in the treatment of cancer.

Independent claim 7 is drafted in terms of a "product-by-process" claim. In view of the provisions of Art, 64(2) EPC the EPO considers "product-by-process" claims to extend to the product per se.

Hence, the products described in the documents D1 and D2 fall within the general definition given in claim 7 of the present application.

Taking into account the fact that a product is not necessarily new if it is made by a novel process and the interpretation of "product-by-process" claims used by the EPO, the subject-matter of claims 7 and 8 is considered to lack novelty in respect to documents D1 and D2, when considered separately (Article 33(2) PCT).

3. None of the documents cited in the search report disclose or suggest the subject-matter of independent claim 1.

Hence, the subject-matter of claim 1 is considered novel and inventive (Art.33(2) and (3) PCT).

4. Claims 2-6 are dependent on claim 1 and as such also meet the requirements of the PCT with respect to novelty and inventive step.